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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/523,673  | 10/31/2005  | Ian Boast            | ENL 347-A                   | 6792             |
| 48980 7590 02/02/2007<br>YOUNG & BASILE, P.C.<br>3001 WEST BIG BEAVER ROAD<br>SUITE 624<br>TROY, MI 48084 |             |                      | EXAMINER<br>SELF, SHELLEY M |                  |
|   |             |                      | ART UNIT                    | PAPER NUMBER     |
|   |             |                      | 3725                        |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE  |             | NOTIFICATION DATE    | DELIVERY MODE               |                  |
| 3 MONTHS  |             | 02/02/2007           | ELECTRONIC                  |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/02/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@youngbasile.com  
audit@youngbasile.com

## Office Action Summary

Application No.

10/523,673

Applicant(s)

BOAST, IAN

Examiner

Shelley Self

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/1/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The Abstract includes legal phraseology such as *comprises* that should be avoided in the Abstract. Correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. With regard to claim 11, neither the specification nor the drawings provide support for the plate (28) being pivotally mounted on the discharge conveyor. Furthermore, it is unclear how the

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plate is pivotally mounted on the discharge conveyor. Clarification is required to facilitate a clear understanding of the claimed invention and proper application of the prior art. Accordingly claim 11 is not deemed allowable as presently presented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-10, 12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Okuya (6,145,768). With regard to claims 1, 6, 9 and 16, Okuya discloses a crusher assembly comprising a crushing chamber (S) having an outlet (8); and a plate (44) mounted adjacent the outlet which is movable independently relative to the outlet, a frame having two side walls (fig. 1), a pair of jaws (4, 5) disposed between the side walls and the jaws defining the crushing chamber.

With regard to claim 2, Okuya discloses wherein the plate (44) is mounted for pivotable movement (col. 7, line 53).

With regard to claim 7, Okuya discloses the plate (44) pivotally mounted on one of the jaws (fig. 7).

With regard to claim 8, Okuya discloses a fixed jaw (4) and swing jaw (5), the plate (44) pivotally mounted on the fixed jaw (fig. 7).

With regard to claim 10, Okuya discloses a discharge conveyor (12).

With regard to claim 12, Okuya discloses the plate (44) having a normal operating position in which the plate (44) is angled relative to the outlet.

With regard to claim 13, Okuya discloses wherein the plate (44) extends at least partially beneath the outlet (fig. 7).

With regard to claim 14, Okuya discloses the plate (44) is movable between open and bending positions (col. 7, lines 19-22, 53).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okuya (6,145,768) in view of Nye (6,129,298). Okuya does not explicitly disclose a hydraulic cylinder. Okuya does however disclose the use of a cylinder (44a). The specific selection of a hydraulic cylinder over that of another (i.e. pneumatic) is one of ordinary mechanical expedients and requires only routine skill in the art. Examiner further notes Applicant fails to positively recite any criticality regarding the use of a hydraulic cylinder over that of any other cylinder. Accordingly, in the absence of any positively recited criticality regarding the specific use of a hydraulic cylinder, the selection of one mechanical expedient over that of another does not in

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itself warrant patentability and would in fact result from routine engineering practices and experimentation.

Moreover Nye teaches that solenoids, air (i.e. pneumatic) actuated piston-cylinder arrangements and hydraulic cylinders are all equivalents and conventional in the mechanical arts (col. 8, lines 50-56). Accordingly, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Okuya's cylinder as a hydraulic cylinder for actuation of the plate (44) because it is well known in the mechanical arts to use any one of a biasing cylinder i.e. hydraulic air/pneumatic as taught by Nye.

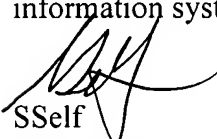
Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okuya (6,145,768) in view of Okuya (6,76,036). Okuya '768 does not explicitly disclose the plate having a wear surface. Okuya '768 does however teach the use of wear materials/surface for contacting surfaces of the jaw crusher. Okuya '036 explicitly teaches the use of wear surfaces for crushing surfaces or surfaces contacting the material that is crushed and wear surfaces on a pivoting plate (7; col. 6, lines 40-43). Okuya '036 teaches this construction so as to reduce wear to moving mechanical structures of the jaw crusher and plate (7). Because the references are from a similar art, it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Okuya's '768 plate (44), having a wear surface for reduced wear/damage to the plate (44) as taught by Okuya '036.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
S. Self  
Patent Examiner  
January 31, 2007